



March 31, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Level 3 Communications LLC's Petition for Forbearance
Under 47 U.S.C. § 160(c) and Section 1.53 of the Commission's Rules
from Enforcement of Section 251(g), Rule 51.701(b)(1), and Rule 69.5(b)

Dear Ms. Dortch:

Enclosed please find the Reply Comments of WilTel Communications, LLC in
the matter referenced above.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kupetsky", written in a cursive style.

Adam Kupetsky
Director of Regulatory and Regulatory Counsel

Enclosure

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
LEVEL 3 COMMUNICATIONS LLC)	
)	WC Docket No. 03-266
Petition for Forbearance Under 47 U.S.C.)	
§ 160 (c) from Enforcement of 47 U.S.C.)	
§ 251 (g), Rule 51.701(b)(1), and Rule)	
69.5(b))	
)	

REPLY COMMENTS OF WITEL COMMUNICATIONS, LLC

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Washington, D.C. 20554**

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REPLY COMMENTS OF WILTEL COMMUNICATIONS, LLC

In addressing the Level 3 petition referenced above (“Petition”) and the *IP-Enabled Services* Notice of Proposed Rulemaking, WC Docket No. 04-35, DA-04-888 (released March 10, 2004), the Commission has to determine whether these proceedings, at their core, are about new technology, new services, and/or new customer benefits that payment of access charges will artificially inhibit, or whether it is about a new (and perhaps reasonable) set of mechanisms for avoiding access charge payments to incumbent local exchange carriers (“ILECs”) for terminating traffic on the PSTN. As access charges comprise, by a wide margin, the largest expense category for interexchange carriers (“IXCs”) and one of the largest revenue streams for local carriers, many IXCs and competitive carriers with interexchange traffic predictably support Level 3’s petition (“Petition”), while ILECs oppose it.

WilTel would emphasize the need for a prompt, clear, and above all non-discriminatory decision in this matter -- especially given the pivotal importance of access charge payments in determining competitive outcomes in this industry. Indeed, some companies are likely to view any FCC delay here as tantamount to permission not to pay

access charges in the meantime. This view, in turn, will drive capital decisions and will determine the pricing and competitive viability of the players in the market. With carriers facing substantial financial and competitive threats, it is imperative that the Commission respond swiftly and decisively to the questions posed here and in related proceedings. It is the Commission's responsibility to eliminate regulatory risk by providing clear interpretation of its rules; delay in this matter constitutes an unacceptable perpetuation of regulatory risk.

The Petition pertains to situations where service providers create an IP-interface to access their customers, a conversion from IP to time division multiplexing ("TDM") occurs, and access at the other end of the call is provided over the PSTN. Clearly, a protocol conversion from IP to TDM occurs when the communication is viewed on an end-to-end basis. The Commission is therefore faced with two fundamental questions:

1. Does this IP-TDM protocol conversion constitute a sufficient change in the data transmitted that such services are exempt from access charges and subject to interconnection agreement-based compensation?
2. If so, what service arrangements between vendors and customers are subject to such an exemption?

The first question is clearly presented, requires fast and decisive Commission action and has been and no doubt will be the subject of most of the commentary on the Petition.

However, WilTel is more concerned that, were the Commission to grant the Petition and find that such IP-TDM services are not subject to access charges, the Commission should do so in a manner that does not result in discrimination against any carrier seeking an opportunity to compete for traffic from such arrangements. Comments in favor of the Petition highlight the relevance of this issue. For example, **Broadwing**

and **MCI** contend that IP-PSTN traffic should not be subject to access charges, while **CompTel/Ascent** and **Global Crossing** argue that the Commission should forbear from applying access charge rules to all forms of IP Protocol communications.

It is not clear from the Petition and the Comments whether granting the Petition would mean that:

- (a) any traffic originating from an IP address would be exempt from access charges regardless of how or by whom the traffic is handed to the PSTN (by the originating service provider, by a wholesale carrier engaged by the originating provider to terminate the traffic or by any other entity); or
- (b) Only “end-to-end” IP-PSTN service providers would be exempt from access charges.

If the FCC were to adopt the latter interpretation, then the Commission effectively would be discriminating between two companies handing traffic to the PSTN in an identical manner. The FCC would inefficiently, unfairly (and unlawfully) favor firms that initiate calls as IP and transport them alone, while prejudicing carriers that provide wholesale transport for the same calls from the IP-TDM conversion point to the final destination on the PSTN. This outcome would be unreasonable because the handoff of traffic to the PSTN is done in precisely the same manner in both instances. To the extent that the FCC grants the Petition, it must clarify that such calls and the companies that transport them are exempt from access charge payments when such calls are terminated on the PSTN.

Secondly, **Level 3** and its supporters (such as **Broadwing** and **MCI**) argue that IP-PSTN traffic should be subject to cost-based interconnection charges rather than access charges. Under this theory, Level 3 contends, if the Petition is granted, all IP-PSTN traffic exchanged between a LEC and a telecommunications carrier within the

same LATA as the PSTN end user would be exchanged over local interconnection trunks pursuant to an interconnection agreement rather than access trunks pursuant to an access tariff.

Whether or not it was intended, this argument implies that granting the Petition would give companies with existing local interconnection trunks and reciprocal compensation arrangements with ILECs an immediate advantage over those companies with Feature Group D connections because the latter group would continue to have to pay access charges. Again, this would result in identical traffic, carried over virtually identical equipment and facilities, being subject to two vastly different payment schemes – i.e., unjust and unreasonable discrimination in violation of Section 202 of the Act. Thus, to the extent that Level 3 requests or suggests that only carriers with local voice interconnection trunks to ILECs will or should benefit from the requested forbearance, WilTel opposes the Petition. If it grants the petition, the FCC must clarify that carriers transporting such IP-PSTN traffic are exempt from access charges regardless of the interconnection arrangement over which the minutes are transported to the LEC. For this traffic, therefore, a Feature Group-based entity with connections to ILECs and no local interconnection trunks would pay local reciprocal compensation interconnection rates, rather than access charges, if the Petition is granted. Any other outcome would result in unreasonable discrimination that the Commission cannot countenance.

WilTel urges the Commission to act quickly to identify and resolve the issues presented in the Petition, in the NPRM and in related proceedings. The sooner that the Commission can formulate clear rules governing the provision of services using enhanced IP technology, the faster the industry can get back to the business of providing

high-quality, competitive services to the public rather than focusing their efforts on strategies based on regulatory arbitrage.

Respectfully submitted,



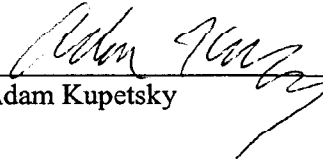
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of WilTel Communications, LLC in WC Docket No. 03-266 was delivered by electronic mail on this 31st day of March 2004 to the parties listed below.


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